

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 00-12712
Chapter 7

MARY GREEN HARTMAN

Debtor

MEMORANDUM

Dale F. Cook has filed a motion to vacate the discharge granted to the debtor, Mary Green Hartman. The discharge was routinely entered on February 1, 2002. Fed. R. Bankr. P. 4004. The court is not dealing with revocation of a discharge under § 727 of the bankruptcy code. 11 U.S.C. § 727(d). The court has at least the same power under Rule 60 to vacate a discharge that it has to vacate other orders. Fed. R. Bankr. P. 9024; Fed. R. Civ. P. 60; 11 U.S.C. § 105(a); *Cisneros v. United States (In re Cisneros)*, 994 F.2d 1462 (9th Cir. 1993); *Clay County Bank v. Culton (In re Culton)*, 161 B.R. 76 (Bankr. M. D. Fla. 1993); *In re Mann*, 197 B.R. 634 (Bankr. W. D. Tenn. 1996).

In the motion and in a supporting brief, Mr. Cook asserts that the court should not have entered a chapter 7 discharge because Mrs. Hartman may have a prior chapter 13 case re-instated if she prevails in her appeal from the dismissal of the chapter 13 case. If the dismissal of the chapter 13 is reversed, this court will be required to decide whether the chapter 13 case should proceed or be dismissed, in

light of Mrs. Hartman's subsequent filing of this chapter 7 case. Reversal of the order dismissing the chapter 13 case will not require the court to allow the chapter 13 case to proceed. *In re Jartran, Inc.*, 87 B.R. 525 (E. D. Ill. 1988). The possibility that the chapter 13 case may yet survive is not a good reason for vacating the chapter 7 discharge.

Mr. Cook asserts that the discharge should be vacated because Mrs. Hartman has incurred large medical bills (over \$100,000) since she filed the chapter 7 case. The court generally will not dismiss a chapter 7 case so that the debtor can file a new chapter 7 case to discharge debts incurred after the filing of the first chapter 7 case. *In re Sheets*, 174 B.R. 254 (Bankr. N. D. Ohio 1994); *In re Harker*, 181 B.R. 326 (Bankr. E. D. Tenn. 1995). Though Mr. Cook's motion seeks to vacate the discharge, the intent is the same as if it asked for dismissal of the case. The court sees no reason to reach a different result in Mrs. Hartman's case.

Finally, the motion to vacate can be stricken on the ground that it was filed by non-lawyer, Mr. Cook, on behalf of another person, Mrs. Hartman. The grounds asserted in the motion are grounds that the debtor, Mrs. Hartman, would assert for her benefit, not grounds that Mr. Cook would assert for his benefit as a creditor. Even if Mr. Cook has a general power of attorney making him Mrs. Hartman's attorney in fact, that does not give him the right to practice law on her behalf. Filing pleadings on behalf of Mrs. Hartman amounts to practicing law because

Mr. Cook purports to represent Mrs. Hartman not only as her agent but also as her lawyer. *State v. Lytton*, 172 Tenn. 91, 110 S.W.2d 313 (1937); *Old Hickory Eng. & Mach. Co. v. Henry*, 937 S.W.2d 782 (Tenn. 1996); *In re Herrera*, 194 B.R. 178 (Bankr. W. D. Ill. 1996); *United States v. Walker*, 2002 WL 745312, No. Civ. 00-239 (E. D. Pa. Jun. 6, 2000). As a result, the motion can be stricken or ignored. *United States v. Agofsky*, 20 F.3d 866 (8th Cir. 1994); *United States v. Stepard*, 876 F.Supp. 214 (D. Ariz. 1994); *Matthews v. Cordeiro*, 144 F.Supp.2d 37 (D. Mass. 2001) (court's duty to take notice of unauthorized practice). Accordingly,

The court will enter an order in accordance with this memorandum. This Memorandum constitutes findings of fact and conclusions of law as required by *Fed. R. Bankr. P. 7052*.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF TENNESSEE
SOUTHERN DIVISION

In re:

No. 00-12712
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ORDER

In accordance with the court's memorandum opinion entered this date,

It is ORDERED that the motion filed by Dale F. Cook to vacate the discharge order, which was entered on February 1, 2002, is denied.

ENTER:

BY THE COURT

R. THOMAS STINNETT
UNITED STATES BANKRUPTCY JUDGE

[entered 4/8/02]